Mohd Nadir bin A Syed Ahamed & Ors v Zubaidi bin Abdul Hamid & Ors

HIGH COURT (ALOR SETAR) — CIVIL SUIT NO 25-03-1992
KC VOHRAH J
7 MARCH 1994

Land Law *— Administration — Appeal against Land Administrator's decision — Time limit prescribed in s 418 of the National Land Code 1965 — Application for extension of time — Whether could be allowed — Courts of Judicature Act 1964 s 25 — National Land Code 1965 ss 418 & 447*

Land Law *— Administration — Appeal against Land Administrator's decision — Time limit prescribed in s 418 of the National Land Code 1965 — Application for extension of time limit —Whether could be allowed under Rules of the High Court 1980 — Rules of the High Court 1980 O 3 r 5 & O 55 r 13(2)*

The applicants were aggrieved with a decision of the Land Administrator, District of Langkawi, and filed an appeal in the High Court, Alor Setar under s 418 of the National Land Code 1965 ('the NLC'). However, they exceeded the three-month period prescribed by s 418 and were late in filing their appeal by one day. The applicants therefore applied for extension of time so as to validate their appeal. Counsel for the applicants maintained that the court had power to enlarge the time limited by s 418 under the jurisdiction conferred by s 25 and item 8 of the Schedule of the Courts of Judicature Act 1964 ('the Act') and by virtue of s 447(1) of the NLC which provides that nothing in the NLC shall affect the operation of any rules of court; and, if any provision of the NLC was inconsistent with any provision of any rules of court, the latter provision shall prevail. On the other hand, counsel for the respondents maintained that neither s 418 nor any other provisions under the NLC expressly gives power to the High Court to enlarge the time prescribed under s 418 and therefore, the High Court had no power to enlarge the time prescribed.

Held, dismissing the application:

(1) The rules of court referred to in s 417 must necessarily relate to rules of procedure, not substantive rules of law affecting the rights and disabilities of parties under the NLC. An aggrieved person under s 418 is given a substantive right to appeal but that right has to be exercised within three months of the decision being communicated to him. Item 8 of the Schedule to the Act confers power on the High Court to extend time only where specific provisions for allowing it to be done is expressed in such law. In this case, s 418 of the NLC does not confer any power on the High Court to extend the time prescribed in the provision.

(2) If s 418 had not limited the time to appeal to three months, O 55 r 13(2) of the Rules of the High Court 1980 would have applied in

this case. If O 55 r 13(2) had applied, extension of the one month time limit in r 13(2) could be made under O 3 r 5 which gives the court power to extend or abridge the period within which a person is 'required or authorized by these rules or by any judgment, order or direction, to do any act in any proceedings'. The provision, however, does not allow the court to extend time limited by some other law. Therefore, the High Court has no power to extend the appeal period prescribed in s 418 NLC and the application for extension of time was dismissed with costs.

Per curiam:
The extension of the appeal period prescribed in s 418 is expressly limited by s 134 of the NLC where the validity of any forfeiture is challenged. Although it may be argued that s 134 implies that the time prescribed in s 418 may be extended for proceedings not caught by s 134, what is implicit in the provision is that s 418 itself does not allow for extension of time and that what it does envisage is that some other written law may allow for extension of the period of appeal under s 418. If there is some such other written law, the said law would not apply to appeals where the validity of forfeiture proceedings are challenged.

[Bahasa Malaysia summary

Pemohon-pemohon terkilan dengan suatu keputusan Pentadbir Tanah, Daerah Langkawi, dan telah memfailkan suatu rayuan di Mahkamah Tinggi, Alor Setar di bawah s 418 Kanun Tanah Negara 1965 ('KTN itu'). Bagaimanapun, mereka telah melebihi tempoh tiga bulan yang ditetapkan oleh s 418 dan terlewat sehari apabila memfailkan rayuan mereka. Oleh itu, pemohon telah membuat permohonan untuk melanjutkan masa untuk mengesahkan rayuan mereka. Peguambela bagi pihak pemohon menegaskan bahawa mahkamah mempunyai kuasa untuk melanjutkan masa yang dihadkan oleh s 418 di bawah bidang kuasa yang diberikan oleh s 25 dan perkara 8 di dalam Jadual kepada Akta Mahkamah Kehakiman 1964 ('Akta itu') dan di bawah s 447(1) KTN itu yang memperuntukkan bahawa tidak terdapat apa-apa di dalam KTN itu yang akan menjejaskan perlaksanaan sebarang kaedah mahkamah; dan jika sebarang peruntukan KTN tidak konsisten dengan sebarang peruntukan kaedah mahkamah, peruntukan yang terkemudian terpakai. Sebaliknya, peguam pihak responden menegaskan bahawa s 418 mahupun sebarang peruntukan di bawah KTN itu dengan nyata memberi kuasa kepada Mahkamah Tinggi untuk melanjutkan masa yang ditetapkan di bawah s 418 dan oleh itu, Mahkamah Tinggi tidak mempunyai kuasa untuk melanjutkan masa yang ditetapkan.

Diputuskan, menolak permohonan itu:
(1) Kaedah-kaedah mahkamah yang dirujuk di dalam s 417 semestinya merupakan kaedah prosedur, bukannya rukun undang-undang

substantif yang mempunyai kesan ke atas hak dan ketidakupayaan pihak-pihak di bawah KTN itu. Seorang yang tekilan di bawah s 418 diberi hak substantif untuk membuat rayuan tetapi hak itu mesti digunakan dalam masa tiga bulan selepas keputusan itu diberitahu kepadanya. Perkara 8 di dalam Jadual kepada Akta itu memberi kuasa kepada Mahkamah Tinggi untuk melanjutkan masa hanya di mana peruntukan spesifik untuk membenarkan perlanjutan masa dibuat dinyatakan di dalam undang-undang yang berkenaan itu. Di dalam kes ini, s 418 KTN itu tidak memberi sebarang kuasa kepada Mahkamah Tinggi untuk melanjutkan yang ditetapkan di dalam peruntukan itu.

(2) Jika s 418 tidak menghadkan masa untuk membuat rayuan kepada tiga bulan, A 55 k 13(2) Kaedah-Kaedah Mahkamah Tinggi 1980 akan terpakai di dalam kes ini. Jika A 55 k 13(2) terpakai, perlanjutan had masa satu bulan di dalam k 13(2) boleh dilakukan di bawah A 3 k 5 yang memberi mahkamah kuasa untuk melanjutkan atau memendekkan tempoh dalam mana seseorang itu 'dikehendaki atau dibenarkan oleh kaedah-kaedah ini atau oleh mana-mana penghakiman, perintah atau arahan, supaya melakukan apa-apa perbuatan di dalam mana-mana prosiding'. Bagaimanapun, peruntukan itu tidak membenarkan mahkamah melanjutkan masa yang dihadkan oleh undang-undang lain. Oleh itu, Mahkamah Tinggi tidak mempunyai kuasa untuk melanjutkan tempoh rayuan yang ditetapkan di dalam s 418 KTN itu dan permohonan untuk melanjutkan masa ditolak dengan kos.

Per curiam:

Perlanjutan tempoh rayuan yang ditetapkan di dalam s 418 dihadkan secara nyata oleh s 134 KTN itu di mana keesahan sebarang pelucuthakan dicabar. Walaupun boleh dihujahkan yang s 134 menandakan bahawa masa yang ditetapkan di dalam s 418 mungkin dilanjutkan untuk prosiding yang tidak termasuk dalam s 134, apa yang tersirat di dalam peruntukan itu adalah bahawa s 418 sendiri tidak membenarkan perlanjutan masa dan apa yang dibayangkan adalah bahawa undang-undang bertulis lain mungkin membenarkan perlanjutan tempoh rayuan di bawah s 418. Jika terdapat undang-undang bertulis yang lain, undang-undang tersebut tidak akan terpakai kepada rayuan di mana keesahan prosiding pelucuthakan dicabar.]

[*Editorial Note*: The applicants have appealed to the Supreme Court.]

Notes

For cases on the administration of land, see 8 *Mallal's Digest* (4th Ed) paras 982–1010.

Cases referred to

1 *Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1 (folld)
2 *Sin Teck Hong Oils Mills Ltd* [1950] MLJ 232 (refd)

Legislation referred to
Civil Law Ordinance 1956 s 8(3)
Courts of Judicature Act 1964 s 25, Schedule
Courts Ordinance 1948 Second Schedule
National Land Code 1965 ss 134, 418, 447
Rules of the High Court 1980 O 3 r 5, O 55 r 13(2)

Manjit Singh (*Manjit Singh & Co*) for the first to seventh applicants.
Mohamed Tawfeek Badjenid (*Tawfeek Badjenid & Partners*) for the eighth to fourteenth applicants.
Hashim bin Yahaya (*Ismael Alabas & Hashim*) for the first and second respondents.
Hassan bin Lah (State Legal Adviser) for the third respondent.

Cur Adv Vult

KC Vohrah J: Under s 418 of the National Land Code 1965 ('the NLC') 'any person or body aggrieved by any decision ... of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court'.

The applicants in this case were aggrieved with a certain decision of the Land Administrator, District of Langkawi, and they filed an appeal in the High Court, Alor Setar. They were late in filing their appeal by one day. They filed it on 1 March 1992 whereas the appeal should have been filed at the latest on 29 February 1992. Thus this application for extension of time — for the extension of the three-month period prescribed in s 418 by one day so as validate the appeal.

It was maintained by both counsel for all the applicants that the court has power to enlarge the time limited by s 418 as s 447(1) of the NLC provides that nothing in the NLC shall affect the operation of any rules of court; and, if any provision of the NLC is inconsistent with any provision of any rules of court, the latter provision shall prevail and the former provision shall, to the extent of the inconsistency, be void. Counsel for the first and second respondents maintained, and counsel for the third respondent agreed with him, that neither s 418 or any other provision under the NLC expressly gives power to the High Court to enlarge the time prescribed under s 418 and therefore the High Court has no power to enlarge the time prescribed.

Section 25 and item 8 of the Second Schedule to the Courts of Judicature Act 1964

It is important to note the extent of the powers the High Court has in respect of enlarging or abridging the time prescribed by any written law and for this we need to turn to the Courts of Judicature Act 1964 ('the Act').

Section 25 of the Act sets out the powers of the High Court thus:

(1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which

A were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.

(2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:

Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

B The Schedule referred to by the above sub-s (2) has one item, item 8, which relates to the power of the High Court to enlarge or abridge the time prescribed by any written law. Item 8 reads:

> Power to enlarge or abridge the time prescribed by any written law for doing any
> C act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed:
>
> Provided that this provision shall be without prejudice to any written law relating to limitation.

In the context of s 25(2) of the Act and item 8 of the Schedule to the Act, it is pertinent to go back to relevant provisions of the predecessor legislation,
D the Courts Ordinance 1948 ('the Ordinance'). Section 47 of the Ordinance provided that the original civil jurisdiction of the High Court was as set out in the Second Schedule. Item 12 of Pt A of the Second Schedule provided as follows:

> E Jurisdiction to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.

It will be noted that in item 8 of the Schedule to the Act, the word 'Power' is used instead of the word 'Jurisdiction' appearing in item 12 of the Second Schedule to the Ordinance. The two provisions of the Ordinance together
F with other impinging provisions were subjected to judicial scrutiny and interpretation in *Lee Lee Cheng v Seow Peng Kwang*.[1]

In that case, one Lee Lee Cheng, who was the administrator of the estate of Gooi who was killed in a motor car accident together with the driver of the motor car in which he was a passenger, sued the respondent who was
G the administrator of the estate of the driver for damages under the provisions of the Civil Law Ordinance 1956. The respondent was granted letters of administration on 4 November 1956 but they were not extracted until 8 August 1957. Lee, the plaintiff, filed her plaint on 17 February 1956, meaning that the proceedings by her were taken after the expiration of the six-month period prescribed by s 8(3)(b) of the Civil Law Ordinance 1956
H which reads:

> No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless proceedings against him in respect of that cause of action ... :
>
> ...
>
> I (b) are taken not later than six months after his personal representative took out representation.

Several applications were brought before the trial judge, one of which was an application for an order that the time prescribed by the section be

enlarged. The trial judge held that the court had no power to enlarge the period of time prescribed by the Ordinance and held that the plaintiff's alleged cause of action was barred by it.

There was an appeal against the decision and the Court of Appeal dismissed the appeal holding that the period of limitation prescribed by s 8(3)(b) was a period of limitation and that item 12 of Pt A of the Second Schedule to the Ordinance was 'merely declaratory of the jurisdiction of the High Court to enlarge the time prescribed by any written law for doing any act or taking any proceeding, always providing there is express provision in the particular written law itself which enables such time to be enlarged' (per Rigby J at p 4).

At p 5, Hepworth J, after examining the relevant provisions of law and analysing the observations of Rustomji (1 *The Law of Limitation* (5th Ed) at p 26) and Sir Dinshah Mulla (*The Code of Civil Procedure* (10th Ed) at p 433) observed:

> It is also necessary to consider the meaning of the word 'jurisdiction' in s 47 of the Courts Ordinance 1948, and the Second Schedule thereto. Every paragraph of the Second Schedule, except one, begins with the word 'jurisdiction' and the word also appears in the heading to that part of the Courts Ordinance in which s 47 appears. 2 *Stroud's Judicial Dictionary* (3rd Ed) at p 1544 states that the word 'jurisdiction' can have two meanings, in one sense meaning 'conferring power' and in the other meaning 'an area or district'. In my view a combination of these is the meaning of the word as used in the Second Schedule, that is that it means the conferring of power to take cognizance of the laws in force in an area or district. If this is taken as its correct meaning then the Second Schedule can be said to confer power on the court to apply the laws as to limitation in the manner prescribed including power to extend time *where specific provision for so doing is made.* (Emphasis added.)

It will be noted that in s 25(2) of the Act and item 8 of the Schedule to the Act the word 'jurisdiction' is not used; the word 'power' is used and to my mind there can be no ambiguity whatsoever that item 8 of the Schedule to the Act confers power on the High Court to apply the laws as to limitation in the manner prescribed by any written law for doing any act or taking any proceeding and this would include the power to extend time provided that specific provision for allowing it to be done is expressed in such law.

Section 418 itself does not confer any power on the High Court to extend the time prescribed in the provision. But both counsel for the applicants say, however, that s 447(1) of the NLC empowers the court to enlarge the time limited by s 418. To understand the import of s 447(1), I think the whole section should be reproduced:

> Saving for rules of court, and procedure in cases not provided for
>
> (1) Nothing in this Act shall affect the operation of any rules of court; and, if any provision of this Act is inconsistent with any provision of any rules of court, the latter provision shall prevail and the former provision shall, to the extent of the inconsistency, be void.
> (2) A person or body seeking to take proceedings in the Court under this Act, and any party to proceedings so taken, may apply to the Court by summons in Chambers for procedural directions in respect of any matter not provided

A for; and the Court on any such application may make such order as it considers appropriate.

The rules of court referred to in this section must necessarily relate to rules of procedure, not substantive rules of law affecting the rights and disabilities of parties under the NLC. An aggrieved person under s 418 is given a B substantive right to appeal against the decision of certain persons but that right is a limited right in that it has to be exercised within three months of the decision being communicated to him. Section 418 does not, however, provide the procedure for the appeal to the High Court. Does the person appeal to the High Court by way of case stated, petition or motion? As to what procedure should be adopted for the appeal, s 447(1) is clear; the C person aggrieved has to go to the rules of the court, meaning, in the context of today's rules, the Rules of the High Court 1980 ('the RHC'), to find the procedure and O 55 r 13(1) is the answer. It states the procedure; the appeal has to be by way of motion setting out the grounds of appeal, supported by affidavit and, if the court so directs at the hearing, by oral D evidence. Of course this procedure has been used all the time for appeals under s 418.

There are other matters in the NLC where a person may take proceedings in court, eg ss 327(1) and 419, and if the procedure for taking the proceedings is not provided for, s 447(2) allows the person to apply for procedural directions by way of summons-in-chambers. To digress the provision under E s 447(2) that the application is by way of summons-in-chambers does seem peculiar bearing in mind that a summons-in-chambers 'can only be used in a pending cause or matter' (per Taylor in *Sin Teck Hong Oils Mills Ltd*[2]). And the question may well be asked whether the said procedure should be disregarded since it is inconsistent with the procedure provided by the rules F of court. I leave it to another forum to decide the matter.

Now, s 447 is a saving provision for rules of court to prevail in matters relating to procedure, not substantive rights, and the procedure for appeals to be made to the High Court is, as mentioned earlier, by way of motion under O 55 r 13(1). If s 418 had not limited the time to appeal to three G months, then O 55 r 13(2) would have applied in this case. Order 55 r 13(2) reads:

> *Unless otherwise provided* by any written law, such appeal shall be made within one month from the date on which the decision was given or the date on which such decision was notified to the person appealing, whichever is the later date. (Emphasis added.)

H

And if O 55 r 13(2) had applied in this case, the application could be made for extension of the time limited in r 13(2) which is a rule of the RHC; and the court by virtue of O 3 r 5 would have the power to extend the time prescribed in O 55 r 13(2). Under O 3 r 5, the court has only power to I extend or abridge the period within which a person is 'required or authorized by these rules or by any judgment, order or direction, to do any act in any proceedings'. In other words, the provision does not allow the court to extend time limited by some other law.

Finally, I wish to note that I am mindful that the extension of the appeal period prescribed in s 418 is expressly limited by s 134 of the NLC where the validity of any forfeiture is challenged. It provides that the validity of any forfeiture under the NLC shall not be challenged in any court except by way of appeal under s 418 and that 'notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said section 418'. It may be argued that this provision implies that the time prescribed in s 418 may be extended for proceedings not caught by s 134. I think however, that what is implicit in this provision is that s 418 itself does not allow for extension of time and that what it does envisage is that some other written law may allow for extension of the period of appeal under s 418; and if there is some such other written law then the said law would not apply to appeals where the validity of forfeiture proceedings are challenged.

From the foregoing I am bound to conclude that the High Court has no power to extend the appeal period prescribed in s 418 NLC. The application for extension of time is dismissed with costs.

Application dismissed.

Reported by Anne Khoo